



Podcast Transcript

32nd Annual Legislative Seminar Series: Majority Whip James Clyburn, D-S.C.

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Lee: For three decades, BakerHostetler has hosted its legislature seminar among the premier annual public policy showcases on Capitol Hill. Though COVID-19 forced a hiatus in 2020, we're back, finding new ways for you to hear firsthand from Democrats and Republicans in the House and Senate on the latest legislative developments on tax, infrastructure, healthcare, trade, energy policy and more. I'm Leeann Lee, and you're listening to BakerHosts.

On today's episode, we kick off our 32nd annual legislative seminar series with a crucial ally of President Joe Biden. One of the top leaders in the house, majority whip, James Clyburn of South Carolina. Congressman Clyburn discusses his party's agenda with the leaders of our federal policy team, former Congressman Mike Ferguson and Heath Shuler. Let's listen in.

Ferguson: Well welcome and thank you all for joining us this afternoon. We are thrilled to be kicking off our 32nd annual BakerHostetler legislative seminar. This year we'll be doing it virtually once again. We're going to bring you the latest on infrastructure and taxes and healthcare and trade policy and more straight from the Democratic and Republican lawmakers themselves. I'm former Congressman Mike Ferguson, I'm a leader of BakerHostetler's federal policy team and my co-host on these programs and my dear friend is joining us, joining me here again today, fellow senior advisor here at BakerHostetler, Congressman Heath Shuler. Heath it's great to be on the program again with you today.

Shuler: It's great to be back, great to see you Mike and kickoff this exciting series once again we cannot be more pleased to have one of the most important leaders in Congress in a long time, favored guest of our legislative seminar, House Majority Whip, Jim Clyburn.

Ferguson: You know, as the whip he's, he's responsible for a lot. He's responsible for shepherding successful passage of President Biden's agenda on the House floor. He's the third ranking Democrat in the House and BakerHostetler frequent guests will know him as a very familiar face. He's a guest at our legislative seminar every year, he's a great friend to the firm and you know, he's been in the leadership roles for pretty much all of his 30 years in elective office. Anybody who followed the 2020 presidential campaign knows him really well. We talked about this a little bit last year. You know, the Biden campaign, I can say this as a Republican, I think the Biden campaign was really on the ropes last year as they were heading into the South Carolina presidential primary and it was Jim Clyburn's endorsement three days before that primary that I really think put Joe Biden over the top, propelled him to his first win in South Carolina and the rest, as they say, is history. So, we're delighted to have somebody of Jim Clyburn's stature and knowledge and character here with us again today. Mr. Whip, thanks again for being with us today.

Clyburn: Thank you very much Mike and Heath. It's always a lot of fun being on this with you guys so I'm just going to keep it fun and let's have a successful event here today. Thanks you guys.

Shuler: Thanks Jim.

Ferguson: It's always a lot of fun to have you and we have such great conversations but, you know, there's a lot on the agenda, a lot on President Biden's agenda a lot on the house Democratic agenda of course and you know, we'll talk about all that, we'll talk about some of those specific items but my first question really Jim is, you know, you have a caucus that is pretty diverse. Any time you get a majority in the House these days it's gonna be a lot of different cats to sort of shepherd and corral into finding those 218 votes. You have folks like AOC who is very well known to people across the country, really a progressive fire brand. And you have a lot of moderates too, you have folks like Kathleen Rice and Stephanie Murphy and other folks who have been on our programs before. Heath Shuler would have been in this group if it was 10 years ago. Jim how do you, how do

you keep that group together on all of the different issues? How do you find those 218 votes every time you have to pass a bill off the floor.

Clyburn: Well, I have two things going for me when it comes to that. First of all, the Speaker of the House, Nancy Pelosi, and the Majority Leader Steny Hoyer, were both whips and so they all understand what it's like to be whip and they know what it, how difficult it is with such a diverse caucus. But secondly, I was born and raised in a parsonage, so I pray a lot to make sure things come out okay. But aside from those two fundamental things, our caucus is a pretty big tent and I think most people recognize that. And under this big tent are let's say several tribes of diversity, backgrounds and experiences and I tell people all the time, my late wife, who Heath got to know very well, and I stayed married for 58 years and you don't stay married that long to one woman without knowing how to fold and hold when you need to and so to go back to that old country song, you got to know when to hold and know when to fold and that's what I do in trying to get to where we need to be and though that may sound a bit corny, the fact of the matter is, that's exactly what happens. You sit down with people, you try to learn as much as you can about what their interests are and you try to make sure that the legislation you're bringing forward is legislation that they can support. And if you see anything in that legislation that may be a problem for them, you should tell them.

Let them know upfront that though you want their vote, here's an issue you may want to take a look at and then decide whether or not you should cast that vote. So I try to be as open and as honest with people as I possibly can and that way things usually come out alright. Heath and I got to be fast friends, he's one the of the hardest people in the world to whip and getting his vote was sometimes difficult. But getting his vote was sometimes what I expected and sometimes I did not expect to get his vote and of course he never disappointed me.

Shuler: Mike I can always tell you there was two parts of those conversations always. One, I always knew that the whip would be honest with me and the second and foremost, he was a tough negotiator. Because I was the whip of the blue dogs, the more central staff members and so we would have a lot of conversations he would say, I only need six or seven can you get me six or seven? And he negotiated hard when I only know he needed four.

Clyburn: Well you knew me a little better than I thought you did.

Ferguson: Well I have to say, I was on a whip team, I was not the whip but I was on a whip team when Republicans had a five seat majority in my freshman term in congress and I remember how hard it is...

Clyburn: Yeah.

Ferguson: ...to get those 218 votes, to get that majority to pass it, whatever it was that you were bringing to the floor. So, you know the hot topic right now of course is infrastructure. There's a lot of discussions, our old house colleague, Shelly Moore Capito who was my classmate in the house, she's now over in the Senate.

And she's really leading the Republican negotiators with the white house and other and Democrats on this package there was news breaking last night that Republicans might come up to a trillion dollar package and you know I guess the devil's always in the details about how much is going to be new money and how much is going to be reprogrammed money but Jim, do you think there's any redlines here? Do you think an infrastructure package, a bipartisan infrastructure package can really get done based on what you're seeing and how this is unfolding? And you know, you talk about when to hold 'em and when to fold 'em, there's a lot of speculation right now that the White House may just sort of fold on the bipartisan conversations and just move ahead with a Democratic package. What do you think is going to happen?

Clyburn: Well, I think several things are in the offing and I have no idea exactly how things will come down because so much of this depends upon the culture of the Senate which is 50/50 as you know. Now, I think it's fool-hearted to believe that if you've got only half the votes, you will get the whole thing that you want and that goes the same for the other side as well. But I do believe that we will get to where we need to be even if we have to split the packages up. Now, that's not coming from me, Senator Coons, you may recall a month or so ago, maybe more than a month, advanced an idea, of splitting this, in two. I think when it comes to traditional issues of infrastructure, roads and bridges and water and sewage, rail and ports, these things are pretty traditional. Joe Biden is where I am on these things. Going forward there's some non-traditional stuff when it comes to infrastructure that we've got to take a look at. Broadband is right at the top of that list.

We are not going to be able to educate our children adequately unless we have broadband. People can't get healthcare appropriately without telehealth and telemedicine. These things are a given and they are non-traditional so I think that they extent to which we can have discussions about what is in fact infrastructure I can take you to places in North Carolina and South Carolina, most especially parts of my congressional district and you know, school construction must take place if we are going to be able to get our children to where they need to be. And so, Joe Biden is treating that as an infrastructure issue and when you start talking about education you gotta look at it a little more than traditional. One of the things that really irked me a little bit is when I hear people on my side say, you've got to do things so that people can send their kids to college. No, we have to do things so people can have a foundation upon which they can help their children fulfill their dreams and aspirations. You don't have to go to a liberal arts college to be an electrician or to be a plumber, to be a landscaper, to be a bricklayer or to be a barber, though I don't need that much anymore.

But these are the kinds of things we have to keep in mind when we put together this infrastructure package. So, it shouldn't be about topline numbers, you know, I know this year everybody talked about Joe Biden was 2.2 trillion and the Republicans came in at 500 billion and now they're up to somewhere around 1 trillion. I don't care what the top line is. What I care about is what the bottom line is. What flows from this. What are we going to produce when we get this? So I do believe there's going to be some serious discussions taking place over the next

two or three weeks and I think we're gonna get a good package. It may be that part of it will be done on traditional stuff the other part may be done on the reconciliation but I think we'll get there.

Shuler: Jim, you know, one of the questions that always comes up is how are we gonna pay for this, you know, what does that look like and the Republicans want to talk about a user fee very similar to like the gas tax or a vehicle mileage tax and then and the president, he would like to you know, kind of look at it from a tax code standpoint, increase taxes in order to pay this to have an offset. You know, we're, you know all of us, the three of us been there before, we know that sometimes there's gonna be that middle ground. Do you think, you know, open up the tax code, being germane in a lot of different areas, you know, what kind of problems and issue is that gonna be over in the Senate side or you know, is Manchin and the others gonna vote for increased taxes or, you know, so how do we ultimately pay for it? Because, you know, it's a trillion dollars, it's a lot of money.

Clyburn: No, I'm glad you asked that though. I'm not a big fan of worrying about that part of it so much. I think what we have to do is first of all decide, what do you want to accomplish. Exactly how you want to make education available and all these other things. And then start putting the numbers out there. We seem to go the other way around. You put a number and you start building out under it. So if that's the way we're gonna go then that's just what we're gonna have to deal with. So let me tell you what my thoughts are. It gets me in a little trouble with some of my friends but I do believe that we ought to pay for this infrastructure bill and I think that one of the things we ought to take a look at it is maybe, what we call a transaction tax. One tenth of one percent on a transaction tax will yield somewhere around 775 billion dollars, one tenth of one percent. Now, I know about user fees but let me tell you something about user fees. Back in your part of North Carolina and my part of South Carolina that's an unfair thing to do. We'll be asking farmers, traveling their farm-to-market roads buying tractors and running their pickup trucks, asking them to pay for inner-city transits. I'm not too sure that's fair. I think we ought to really think about what it is that we are trying to achieve and make sure that we don't put an undue burden on one part of our society as opposed to the other.

Rural people want broadband and they'll go to great lengths to get broadband but they certainly don't want to pay for people traveling subways which they have never been on and many of them probably never will be on.

Shuler: Well I can certainly tell, I remember, you know, 15 years ago, you've been talking about broadband for, you know, well over a decade now...

Clyburn: Right.

Shuler: ...so, you know, I looked in my community alone, when kids were having to go to churches or you know, drive up close to the libraries to where they could actually or the police departments and volunteer fire department started putting Wi-Fi in where, those students, and you know, they were sitting in their cars for five and six hours a day, having to do their classes in a vehicle and so I know that's very

difficult. So, continue the hard fight. Broadband is needed certainly in a lot of areas I know in South Carolina and all over our country. So keep up the good fight. One of the things that continues to be a negotiating point is climate and environmental provisions, you are included in this. How do we look at nuclear? If we look at, you know how is nuclear being looked upon by the president and the Democratic caucus as an option.

Clyburn: Well I sure hope it's being looked upon favorably. As you probably remember, I've been pro-nuclear for a long, long time and I'm pro-nuclear for several reasons. One, it's the cleanest. We start talking about the environment, it's the cleanest. I know the fear that a lot of people have because of some past experiences but look, I don't care what we do, we have to do it in a safe and secure way and I think you can do nuclear safely and securely. Now here's the deal, here in South Carolina, to date about 54, 55% of our energy is nuclear. I don't know what that number is in North Carolina but I found out what it was up in Illinois and the reason I did is because Barack Obama and I had some toe-to-toe discussions about nuclear and I had to remind him on more than one occasion that the majority of the energy in Illinois comes from nuclear.

So, we were able to get to a pretty good place now. You know what experience we just had here in South Carolina with one of our nuclear facilities. I would hope that that would not be the same going forward. Hopefully we'll learn from our mistakes and we'll be honest and open with people. When things go bad, admit they're going bad and we need to try it a different way. But nuclear has got to be on the, in the equation I think, if we're going to have it. Now you know, smorgasbord. You've heard me say that word before. I believe in wind and solar and I believe in nuclear as well.

Ferguson: Jim, I'm the Republican here so I've got to ask you about taxes. The, you know, I, if there's some conversation I've heard among some members that if you do end up getting a bipartisan infrastructure package and then try to do, you know, a second package under reconciliation later, the American Families Plan, which would presumably include raising taxes or making some changes to the tax code. A lot of the Democrats who I talk to who are up for reelection next year in a midterm election, you know, concerned about voting for raising taxes, you know, it's, you know, very, very thin margin in the house as you well know, 50/50 in the Senate. Some folks say it might be better just to do it a bipartisan infrastructure package and not do the second package so, you know a lot of the folks don't have to take that tough vote. But what's your crystal ball say? What's going to happen on that and what's the timing? Will that be, if it happens will it be before the end of this year?

Clyburn: Well I don't know exactly what's going to happen but let me tell you where I stand on that. I saw a number yesterday 62%. Know what that number was? That was Joe Biden's favorability, yesterday. And I also saw another number that was over 70% that had to do with Joe Biden's tax plan. Over 70% of the American people support this idea of raising taxes on people over \$400,000 a year. And when you look at the percentage of people that that would apply to, those are people that I'm not too sure many of the people in my caucus will get their votes anyway. So I

don't know that that is a big, big deal with a majority in my caucus but I'm going to remind people, Mike, especially my Republican friends, I'm going to ask them, who's letter or phone call I got from you, when we had that 1.9 trillion dollar tax cut that benefited, 80% of the benefits went to less than 20% of the people in the country, did I get a letter from you, a phone call about that? Come on, let's be fair here. So, I think that tax cuts may be attractive. But I tell you what is more attractive to me is preserving the integrity of this democracy, making sure that all of our citizens are treated fairly, and all of them will have access to the greatness of this country. As Heath would tell you, with liberty and justice for all is the way I close the pledge like we all do. But the big thing to me is making this country's greatness accessible and affordable for all. And I don't think you can do that by not making investments in educating our children, taking care of the elderly, doing the infrastructure that needs to be done, and that's the way you generate economic opportunity.

Ferguson: So you sound bullish, on the package, what do you think happens then with the SALT that seems to be maybe one of the most controversial provisions for Democrats, is what do you do with this SALT provision, obviously, Senator Schumer wants that eliminated and some of your moderates, Josh Gottheimer, some of your newer New Jersey folks, but then you have folks from other states to Stephanie Murphy, and folks from redder states or from swing districts who look at that as a big giveaway to wealthy taxpayers in bluer states. How do you manage that kind of a provision in a tax package?

Clyburn: I think state and local taxes are things that we ought to be concerned about. In that old SALT provision, let's toughen state and local taxes, I think is something we ought to be very sensitive to. Because I know it's easy to say that the big state people, New York is big on it, New Jersey's big on it, but it helps a lot of people, middle income people, in smaller states as well. And so, I do believe that you can put some kind of means test or whatever you may call it but take a look. Same way we did with mortgages on houses and stuff, taxes on automobiles, though I still think that sales taxes on automobiles are too low, I do believe that we ought to look at SALT taxes, it'd be some kind of way of means testing.

Ferguson: So you think there might be a middle ground on that to...

Clyburn: I do think so. I really believe that most of the things that we talk about, there is middle ground if we develop the will to find it. My dad used to tell me all the time, son there's always a way, but the big problem is developing the will.

Shuler: Let's look more on the international front, seeing that Majority Leader Schumer is leading the way, he's been the Democratic hawk on China, I think he's been very aggressive this week on timeline of the Endless Frontier Act, to provide very comprehensive, do you think it's gonna pass all the Senate and will you take up that legislation or something very similar in the House?

Clyburn: Well you know I was hoping we'd get through this without you asking me about the foreign stuff that I don't confess to know a whole lot about. I don't study those issues as well as some of my colleagues. And there are people I trust on those

issues, as you know Schumer is sort of a hawk when it comes to the China stuff, no bigger hawk than Nancy Pelosi, might I add when it comes to China. So I kinda step back and let those people who spend the time on those look at it and then I'll step in when they tell me it's in enough shape to try to get the votes for it. As I said earlier, she used to a whip, Steny Hoyer, who sets the schedule, determines what comes to the floor, used to a whip, so when they start putting these things together, and saying they wanna get the votes, I remind them that you've been where I am and let's just make sure you get it right before you ask us to vote for it. But having said that, I don't have any strong feelings about those things, I really been tying most of my real in-depth studies to the domestic stuff.

Shuler: So, the debt limit's coming up July 31st, Democrats have made it very clear they won't negotiate on spending cuts in exchange as Republicans have demanded, but we have to use the budget reconciliation in the Senate to be able to pass this legislation?

Clyburn: Well, I am one of those people who really believe that we ought to get rid of the debt limit, I've been saying that for several years now. I mean, what is it? Every year we bump up to it and we raise it and we go on back to doing business. How many countries in the world got a debt limit? We might be the only one, there may be one or two others, I don't know. But I do know this, that I think that is something that if we got it, expand it, raise it, do what we need to do, and go on and run the country. So, the debt limit, we aren't going to default. What we got to do is create an economy that will allow us to the jobs that are necessary for people to go to work and pay taxes, help pay down the debt, help those deficit, hopefully in the not too distant future, eliminate that deficit. But that ceiling has got to be raised.

Ferguson: Jim, I know we're short on time, I got two quick ones I'd love to get in and just get your thoughts on. Big tech has been in the news and getting lots of criticism from both sides of the aisle, and lot of people talking about possible repeal of Section 230 of the Communication Decency Act, it seems that the FCC is really reluctant, you're very familiar with the FCC of course, the FCC seems reluctant to sort of take this on, so my first question is do you think there'll be congressional action on this, because there seems to be a lot of folks on both sides who are talking more and more about possibly a repeal of Section 230. My first question is, what do you think the odds are of congress acting on that this year?

Clyburn: I think the odds are pretty good that Congress will act on it whether or not that's going to be an out and out repeal, I don't know. You are right my daughter, Mignon, spent almost nine years over at the FCC, and maybe that's the reason she didn't want to go back, Joe Biden invited her back to the position, in fact to the chairmanship really but she said no I'm good on that, I'm moving on, and maybe that's why she decided to move on. We talked about this a lot, and it is a tough issue, but I do believe that there must be a balance. There's a real problem that we have with so many things, we look at the First Amendment and the Supreme Court has told us, there are limitations on free speech. We look at the Second Amendment and Antonin Scalia in writing, is written, that there's a limitation on the Second Amendment. I think when you look at 230, this whole

notion of absolutism, that you are absolutely free to do, put whatever you want out there in the ethos, I don't know that that's a good a place to be. We ought to take a hard look on what the impact of all this is and make the modifications that are necessary for people to enjoy whatever their freedoms might be. But free speech has limitations.

Ferguson: So, my last question Jim, and thanks so much for your time, coming through this pandemic now we've seen three American companies working closely with our federal government to come up with vaccines which are really I think doing a great job of putting this pandemic in the rearview mirror as much as possible as quickly as possible, incredible innovation, Democrats in the House have a bill HR3 that some folks are concerned what that would do to potentially harm innovation in the pharmaceutical industry and in life sciences, in fact some of your members, I think ten of your members of the Democratic caucus I think signed a letter recently raising some concern amid trying to find balance between innovation and affordability for folks to be able to afford their medicines, what do you think's gonna happen there and is there an opportunity for some middle ground there?

Clyburn: I hope so. I really hope there's a middle ground, once again I'm a great believer in science, I'm a great believer in research. As you know, my wife lost a thirty year battle with diabetes, and I get a lot of flack from a lot of people about where my relationships are. And for some reason because I vote so much for research, they tend to tie that to being in the pockets of pharmaceuticals. No, I'm all in when it comes to research. I wanna see a cure for cancer, cystic fibrosis, multiple sclerosis, I wanna see us do something about diabetes, I know what it does. So, I'm all in for research and so the extent to which a balance can be reached when it comes to research and affordability, I want as a said, the greatness of this country to be accessible and affordable. And so don't need to have good drugs for diabetes and everything else if people can't afford it. So, there's a balance that's got to be struck, and I congratulate Pfizer, I congratulate Moderna, AstraZeneca, Johnson and Johnson, they've done something that's never been done in the history of this country. See I'm old enough to remember the Polio vaccine, Jonas Salk, in fact Albert Sabin, the second vaccine, retired from the medical university of South Carolina, and I got to meet him. So, I was very proud of that, my fraternity brother Charles Drew, what he did is research, when it came how to store blood to save it until we need it. When you look at that, research should not be sacrificed. But we need to make sure that things remain affordable.

Ferguson: Jim, you're a great guest and a great friend to BakerHostetler, Heath never fails to satisfy, does he?

Shuler: The very best, absolutely.

Clyburn: Thank you guys.

Lee: Thank you Majority Whip James Clyburn, Mike, and Heath. If you have any questions for Mike and Heath their contact information is in the show notes. As always, thanks for listening to BakerHosts.

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